

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1104 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 alcoholic beverages and tobacco.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 6-2.5-6-14 IS ADDED TO THE INDIANA CODE
- 7 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 8 1, 1999]: **Sec. 14. (a) The department shall compile a list annually**
- 9 **of retail merchants that sell tobacco products that includes the**
- 10 **following information:**
- 11 (1) On a county by county basis, the name and business
- 12 address for each location at which the retail merchant sells
- 13 tobacco products.
- 14 (2) The name and business address of each new retail
- 15 merchant since the previous report.
- 16 (3) The name and business address of each retail merchant
- 17 that no longer sells tobacco products since the previous
- 18 report.
- 19 The department shall deliver the list prepared under this section
- 20 to the division of mental health.
- 21 (b) A retail merchant that sells tobacco products must provide
- 22 the information required by the department under this section.
- 23 (c) The department shall prescribe the form, or modify an
- 24 existing form, to collect the information required by this section."

Page 2, between lines 16 and 17, begin a new paragraph and insert:  
 "SECTION 2. IC 7.1-2-2-9 IS AMENDED TO READ AS  
 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) An enforcement  
 officer is vested with full police powers and duties to enforce:

- (1) the provisions of this title;
- (2) any other law of this state relating to alcohol or alcoholic  
 beverages; and
- (3) ~~youth tobacco sales~~ **laws, including tobacco vending  
 machines.**

(b) An enforcement officer may issue a summons for infraction or  
 misdemeanor violations if the defendant promises to appear by signing  
 the summons. A defendant who fails to appear is subject to the  
 penalties provided by IC 35-44-3-6.5. Upon failure to appear, the court  
 shall issue a warrant for the arrest of the defendant.

(c) In addition to the authority of an enforcement officer under  
 subsection (a), an enforcement officer may act as an officer for the  
 arrest of offenders against the laws of this state if the enforcement  
 officer reasonably believes that a crime is or is about to be committed  
 or attempted in the enforcement officer's presence.

SECTION 3. IC 7.1-2-3-33 IS ADDED TO THE INDIANA CODE  
 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 1, 1999]: **Sec. 33. The commission is authorized to:**

- (1) investigate a violation of; and**
  - (2) enforce a penalty for a violation of;**
- IC 35-46-1-10, IC 35-46-1-10.2, IC 35-46-1-11.3, IC 35-46-1-11.5,  
 or IC 35-46-1-11.7."**

Page 4, after line 35, begin a new paragraph and insert:

"SECTION 7. IC 7.1-6-2-6 IS ADDED TO THE INDIANA CODE  
 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 1, 1999]: **Sec. 6. (a) The youth tobacco education and enforcement  
 fund is established. The fund shall be administered by the  
 commission.**

**(b) Expenses of administering the fund shall be paid from  
 money in the fund.**

**(c) The treasurer of state shall invest the money in the fund not  
 currently needed to meet the obligations of the fund in the same  
 manner as other public money may be invested.**

**(d) Money in the fund at the end of a state fiscal year does not  
 revert to the state general fund.**

**(e) Money in the fund shall be used for the following purposes:**

- (1) One-third (1/3) of the money in the fund for youth smoking  
 prevention education. The commission may contract with the  
 state department of health or the office of the secretary of  
 family and social services for youth smoking prevention  
 education programs.**
- (2) One-third (1/3) of the money in the fund for education and**

1 training of retailers who sell tobacco products. The  
 2 commission may contract with education and training  
 3 programs of the office of the secretary of family and social  
 4 services, the division of mental health, enforcement officers,  
 5 or a program approved by the commission.

6 **(3) One-third (1/3) of the money in the fund to the commission**  
 7 **for enforcement of youth tobacco laws.**

8 SECTION 8. IC 35-46-1-10 IS AMENDED TO READ AS  
 9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) A person who  
 10 knowingly sells or distributes tobacco to a person less than eighteen  
 11 (18) years of age commits a Class C infraction. **For a sale to take**  
 12 **place under this section, the buyer must pay the seller for the**  
 13 **tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment**  
 14 **for an infraction committed under this section must impose a civil**  
 15 **penalty of fifty dollars (\$50). A person may not be issued a citation**  
 16 **or summons for a violation of this section more than once every**  
 17 **twenty-four (24) hours.**

18 (b) It is not a defense that the person to whom the tobacco was sold  
 19 or distributed did not smoke, chew, or otherwise consume the tobacco.

20 (c) ~~It is a defense that the accused person reasonably believed that~~  
 21 ~~the buyer or taker was at least eighteen (18) years of age. The~~  
 22 ~~following defenses are available to a person accused of selling or~~  
 23 ~~distributing tobacco to a person who is less than eighteen (18) years~~  
 24 ~~of age:~~

25 (1) The buyer or recipient produced a driver's license bearing  
 26 the purchaser's or recipient's photograph, showing that the  
 27 purchaser or recipient was of legal age to make the purchase.

28 (2) The buyer or recipient produced a photographic  
 29 identification card issued under IC 9-24-16-1, or a similar  
 30 card issued under the laws of another state or the federal  
 31 government, showing that the purchaser or recipient was of  
 32 legal age to make the purchase.

33 (3) The appearance of the purchaser or recipient was such  
 34 that an ordinary prudent person would believe that the  
 35 purchaser or recipient was not less than the age that complies  
 36 with regulations promulgated by the federal Food and Drug  
 37 Administration.

38 (d) It is a defense that the accused person sold or delivered the  
 39 tobacco to a person who acted in the ordinary course of employment or  
 40 a business concerning tobacco:

- 41 (1) agriculture;
- 42 (2) processing;
- 43 (3) transporting;
- 44 (4) wholesaling; or
- 45 (5) retailing.

46 (e) As used in this section, "distribute" means to give tobacco to

another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a person who sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 9. IC 35-46-1-10.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10.2. (a) A retail establishment that sells or distributes tobacco to a person less than eighteen (18) years of age commits a Class C infraction. For a sale to take place under this section, the buyer must pay the retail establishment for the tobacco product. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:

(1) If the retail establishment at that specific business location has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).

(2) If the retail establishment at that specific business location has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of one hundred dollars (\$100).

(3) If the retail establishment at that specific business location has had two (2) citations or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).

(4) If the retail establishment at that specific business location has had three (3) or more citations or summonses issued for a violation of this section in the previous ninety (90) days, a civil penalty of five hundred dollars (\$500).

A retail establishment may not be issued a citation or summonses for a violation of this section more than once every twenty-four (24) hours for each specific business location.

(b) It is not a defense that the person to whom the tobacco was sold or distributed did not smoke, chew, or otherwise consume the tobacco.

(c) The following defenses are available to a retail establishment accused of selling or distributing tobacco to a person who is less than eighteen (18) years of age:

(1) The buyer or recipient produced a driver's license bearing

the purchaser's or recipient's photograph showing that the purchaser or recipient was of legal age to make the purchase.

(2) The buyer or recipient produced a photographic identification card issued under IC 9-24-16-1, or a similar card issued under the laws of another state or the federal government, showing that the purchaser or recipient was of legal age to make the purchase.

(3) The appearance of the purchaser or recipient was such that an ordinary prudent person would believe that the purchaser or recipient was not less than the age that complies with regulations promulgated by the federal Food and Drug Administration.

(d) It is a defense that the accused retail establishment sold or delivered the tobacco to a person who acted in the ordinary course of employment or a business concerning tobacco:

- (1) agriculture;
- (2) processing;
- (3) transporting;
- (4) wholesaling; or
- (5) retailing.

(e) As used in this section, "distribute" means to give tobacco to another person as a means of promoting, advertising, or marketing the tobacco to the general public.

(f) Unless a person buys or receives tobacco under the direction of a law enforcement officer as part of an enforcement action, a retail establishment that sells or distributes tobacco is not liable for a violation of this section unless the person less than eighteen (18) years of age who bought or received the tobacco is issued a citation or summons under section 10.5 of this chapter.

(g) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund (IC 7.1-6-2-6).

SECTION 10. IC 35-46-1-11.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE MAY 13, 1999]: Sec. 11.3. (a) This section does not apply to advertisements **that are less than fourteen (14) square feet and** posted:

- (1) at street level **in the window or** on the exterior of a business **property or** establishment where tobacco products are manufactured, distributed, or sold; or
- (2) on vehicles.

(b) After ~~December 31, 1996~~, **May 13, 1999**, a person may not advertise or cause to be advertised tobacco products on a billboard located within two hundred (200) feet of a public or private elementary or secondary school, as measured between the nearest point of the billboard and the nearest point of a building used by the school for instructional purposes: **or an outdoor advertisement that occupies an**

1 area that exceeds fourteen (14) square feet, including any  
 2 advertisement that functions as a segment of a larger advertising  
 3 unit or series.

4 (c) A person who violates this section commits a ~~Class C~~ **Class C**  
 5 ~~misdemeanor.~~ **infraction. An advertisement that is in**  
 6 **violation of this section must be removed not more than ten (10)**  
 7 **days after a citation or summons has been issued. Notwithstanding**  
 8 **IC 34-28-5-4(c), if an advertisement that is in violation of this**  
 9 **section is not removed not more than ten (10) days after a citation**  
 10 **or summons has been issued, a civil judgment for an infraction**  
 11 **committed under this section must include a civil penalty of one**  
 12 **hundred dollars (\$100) for each day that the advertisement was in**  
 13 **violation of this section.**

14 (d) Notwithstanding IC 34-28-5-4(c), civil penalties collected  
 15 under this section must be deposited in the youth tobacco education  
 16 and enforcement fund (IC 7.1-6-2-6).

17 SECTION 7. IC 35-46-1-11.5 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11.5. (a) **Except for a**  
 19 **coin machine that is placed in an entranceway, an exit, a hallway,**  
 20 **a restroom, or another common area that is accessible to persons**  
 21 **who are less than eighteen (18) years of age, this section does not**  
 22 **apply to a coin machine that is located in the following:**

23 (1) That part of a licensed premises (as defined in IC 7.1-1-3-20)  
 24 where entry is limited to persons who are at least eighteen (18)  
 25 years of age.

26 (2) Private industrial or office locations that are customarily  
 27 accessible only to persons who are at least eighteen (18) years of  
 28 age.

29 (3) Private clubs if the membership is limited to persons who are  
 30 at least eighteen (18) years of age.

31 (4) ~~A location where the vending machine can be operated only~~  
 32 ~~by:~~

33 (A) the owner; or

34 (B) an employee;

35 ~~who is at least eighteen (18) years of age. The vending machine~~  
 36 ~~may be operated directly or through a remote control device if the~~  
 37 ~~device is inaccessible to all customers. Riverboats where entry~~  
 38 **is limited to persons who are at least twenty-one (21) years of**  
 39 **age and on which lawful gambling is authorized.**

40 (b) As used in this section, "coin machine" has the meaning set forth  
 41 in IC 35-43-5-1.

42 (c) ~~a person~~ **Except as provided in subsection (a), an owner of a**  
 43 **retail establishment may not:**

44 (1) distribute or sell tobacco by use of a coin machine; or

45 (2) install or maintain a coin machine that is intended to be used  
 46 for the sale or distribution of tobacco.

(d) ~~A person~~ **An owner of a retail establishment** who violates this section commits a Class C infraction. **A citation or summons issued under this section must provide notice that the coin machine must be moved within two (2) business days. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:**

**(1) If the owner of the retail establishment has not been issued a citation or summons for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).**

**(2) If the owner of the retail establishment has had one (1) citation or summons issued for a violation of this section in the previous ninety (90) days, a civil penalty of two hundred fifty dollars (\$250).**

**(3) If the owner of the retail establishment has had two (2) citations or summonses issued for a violation of this section in the previous ninety (90) days for the same machine, the coin machine shall be removed or impounded by a law enforcement officer having jurisdiction where the violation occurs.**

**An owner of a retail establishment may not be issued a citation or summons for a violation of this section more than once every two (2) business days for each business location.**

**(e) Notwithstanding IC 34-28-5-4(c), civil penalties collected under this section must be deposited in the youth tobacco education and enforcement fund IC 7.1-6-2-6.**

**SECTION 8. IC 35-46-1-11.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11.7. (a) A retail establishment that derives at least fifty percent (50%) of its monthly gross sales from the sale of tobacco products may not allow an individual who is less than eighteen (18) years of age to enter the retail establishment.**

**(b) An individual who is less than eighteen (18) years of age may not enter a retail establishment described in subsection (a).**

**(c) A retail establishment described in subsection (a) must conspicuously post on all entrances to the retail establishment a sign in boldface type that states "NOTICE: It is unlawful for a person less than 18 years old to enter this store."**

**(d) A person who violates this section commits a Class C infraction. Notwithstanding IC 34-28-5-4(c), a civil judgment for an infraction committed under this section must be imposed as follows:**

**(1) If the person has not been cited for a violation of this section in the previous ninety (90) days, a civil penalty of fifty dollars (\$50).**

**(2) If the person has had one (1) violation in the previous**

1           ninety (90) days, a civil penalty of one hundred dollars (\$100).

2           (3) If the person has had two (2) violations in the previous  
3           ninety (90) days, a civil penalty of two hundred fifty dollars  
4           (\$250).

5           (4) If the person has had three (3) or more violations in the  
6           previous ninety (90) days, a civil penalty of five hundred  
7           dollars (\$500).

8           A person may not be cited more than once every twenty-four (24)  
9           hours.

10          (e) Notwithstanding IC 34-28-5-4(c), civil penalties collected  
11          under this section must be deposited in the youth tobacco education  
12          and enforcement fund IC 7.1-6-2-6.

13          SECTION 9. [EFFECTIVE MAY 14, 1999] (a) Notwithstanding  
14          IC 35-46-1-11.3, as amended by this act, a person who before May  
15          14, 1999, had:

16           (1) an advertisement of a tobacco product on a billboard that  
17           was compliant with IC 35-46-1-11.3, before its amendment by  
18           this act; and

19           (2) a contract to continue the advertisement of the tobacco  
20           product after May 13, 1999;

21          may continue to advertise the tobacco product on the billboard.  
22          However, the person may not renew or extend the contract after  
23          May 13, 1999.

24          (b) This SECTION expires July 1, 2000.

25          SECTION 10. An emergency is declared for this act."

26          Renumber all SECTIONS consecutively.

(Reference is to HB 1104 as printed February 25, 1999.)

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Representative Lytle